

P.L. II
J. Forman



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-193308

DATE: February 14, 1979

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00487

MATTER OF: Consolidated Diesel Electric Company

[Protest of Proposal Rejected By Air Force as Technically Unacceptable]

DIGEST:

1. Protest that solicitation is unduly restrictive because of requirement that offerors submit certification of compliance with fuel and engine specifications is untimely under Bid Protest Procedures where first filed after closing date for receipt of proposals. Protest that only one offeror could comply with alleged restrictive specification is not supported in record.

2. Protest that confusion resulting from solicitation amendments coupled with industry confusion regarding solicitation requirements require protester be given additional opportunity to submit revised proposal is untimely under Bid Protest Procedures where filed more than 10 days after agency rejected protester's request.

On November 4, 1977, the Department of the Air Force (Air Force) issued Letter Request for Technical Proposals AFD 2060-78-3800 as the first step of a two-step negotiated procurement. The solicitation requested technical proposals for light weight armored vehicles. In step one (Request for Technical Proposals), offerors were to submit technical proposals, without pricing information, for evaluation of the technical acceptability of the vehicle offered. Step two (Request for Proposals) is to be a negotiated competition among the offerors submitting acceptable proposals under step one.

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Consolidated Diesel Electric Company (Consolidated) submitted a technical proposal which was rejected by the Air Force as technically unacceptable. Consolidated protests the issuance of step two Requests for Proposals and the award of any contract thereunder.

As grounds for protest, Consolidated alleges that the purchase description for the armored vehicles under step one unduly restricts competition by requiring offerors to furnish certification, in the language prescribed, that the engine proposed is designed to operate on unleaded and leaded gasoline. The engine certification was to be signed by the engine manufacturer on the form provided which lists the engine and fuel specifications. Consolidated alleges that only one offeror was able to furnish the required certificate because of "the confusion engendered by * * * various amendments to * * * the Request for Technical Proposals * * * coupled with confusion within the automobile industry" regarding the purchase description. Consolidated also protests the agency's demand for strict compliance with the certification requirement. As a result, Consolidated states that it should be given another chance to submit a revised technical proposal before price offers are solicited.

We must dismiss Consolidated's protest as untimely under our Bid Protest Procedures and can not judge it on the merits for these reasons.

As noted above, the solicitation was issued on November 4, 1977. The amended closing date for receipt of step one technical proposals was September 12, 1978. On September 28, 1978, the Air Force notified Consolidated that its proposal was unacceptable because the required certification was not included. On October 3, 1978, Consolidated wrote the Air Force stating that the "certification" it submitted was substantially equivalent to the one solicited and requested an extension of time to submit an additional or substitute certification from a different engine manufacturer. At Consolidated's request, the Air Force met with Consolidated on October 4, 1978, and told Consolidated again that its proposal was considered unacceptable and that its request for additional

time to submit a revised proposal would not be allowed. The substance of the meeting was confirmed by the Air Force in a letter to Consolidated dated October 19, 1978.

Consolidated protested to our Office on October 25, 1978, objecting to the Air Force letter of October 19, 1978. Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation apparent prior to the closing date set for receipt of initial proposals shall be filed prior to that date. 4 C.F.R. § 20.2(b)(1) (1978). The allegation that the required engine manufacturer's certification unduly restricts competition is clearly an assertion that the solicitation was defective. Since the protest was not filed until over a month after the closing date for receipt of proposals, it is untimely and cannot be considered on its merits. Francis & Jackson Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79.

Moreover even if Consolidated's letter of October 3, 1978, to the Air Force, is regarded as a protest filed with the contracting agency, Consolidated was advised by the Air Force on October 4, 1978, that its proposal was still considered unacceptable and it would not be granted a time extension to submit a revised proposal. Our Bid Protest Procedures also require that where a protest is filed with the contracting agency, any subsequent protest to our Office must be filed "within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 20.2(a) (1978). Since Consolidated was notified at the October 4, 1978, meeting that its objections would not be allowed and also that its contention that "confusion" required that offerors be given an additional opportunity to submit revised proposals was rejected, Consolidated should have protested here within 10 working days after the meeting. However, as stated above, Consolidated's protest was not filed at GAO until October 25, 1978, and is untimely. Graphic Litho Corporation, B-190928, January 9, 1978, 78-1 CPD 18.

In addition, with regard to Consolidated's protest of the Air Force's demand for strict compliance with the certification requirement, Consolidated knew of the Air Force's position and its subsequent rejection of Consolidated's proposal on September 28, 1978, so that the October 25, 1978, protest to GAO would again be untimely as filed more than 10 days after the basis for protest was known. 4 C.F.R. § 20.2(2) (1978). While Consolidated states that it is objecting to the Air Force letter of October 19, 1978, this letter only reconfirmed the agency's position as stated at the October 4, 1978, meeting and at earlier dates, and does not extend the time for filing bid protests at our Office. See Kenney Refrigeration, B-191026, January 31, 1978, 78-1 CPD 87.

Finally, Consolidated's allegation that only one offeror was able to furnish the engine manufacturer's certification is not supported in the record. Indeed, the record indicates that several engine manufacturers were willing to certify their engines in accordance with the Air Force specifications and also that more than one offeror submitted the required certificate.


Milton J. Spolar
General Counsel